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SENATE

REPORT
98-559

EASTERN PACIFIC TUNA LICENSING ACT OF 1984

JULY 17, 1984.—Ordered to be printed

Filed under authority of the order of the Senate of June 29 (legislative day, June 25), 1984

Mr. PACKWOOD, from the Committee of Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 5147]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 5147) to implement the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

The purpose of H.R. 5147 is to implement, for the United States, the Eastern Pacific Ocean Tuna Fishing Agreement (EPOTFA) and its Protocol which were signed on March 15, 1983 and ratified by the United States on September 6, 1983.

BACKGROUND AND NEEDS

The highly migratory nature of tuna, which pass through many coastal state jurisdictions, has led the United States to maintain that tuna resources cannot be managed unilaterally by coastal nations. Instead, tuna must be conserved and managed cooperatively by the nations bordering on the tuna's migratory range.

Since 1950, the United States has been a party to the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC), which was designed to conserve and manage tuna through international agreement. Canada, Costa Rica, France,

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Japan, Mexico, Nicaragua, Panama, and the United States participated in this convention. From 1950 to 1978, the IATTC managed tuna using annual harvest quotas in an area extending from California to Chile and seaward over 1,000 miles into the Pacific.

In recent years, nations have adopted 200-mile fishery conservation zones and some nations, unlike the United States, claim jurisdiction over tuna in their zones. Also, tuna fleets were modernized. These changes led participants in the IATTC to seek a new convention that might better reflect the changes that had occurred since 1950. During negotiation of a new convention, Mexico and Coasta Rica stood by their claims to jurisdiction over tuna resources within their 200-mile zones, claims not recognized by the United States. Seizures of U.S. tuna vessels in the Mexican and Coasta Rican zones resulted in the imposition of a U.S. moratorium on imports of tuna from those two nations.

On March 15, 1983, the United States, Costa Rica, and Panama signed the Eastern Pacific Ocean Tuna Fishing Agreement (EPOTFA). Guatamala and Honduras have since signed the accord, which is interim in nature pending the negotiation of a more comprehensive management regime.

The EPOTFA creates an international authority, the "Council", to issue regional licenses for tuna fishing. The geographic area covered by the license would include from 12 to 200 miles of the coasts of nations party to the Agreement, and would cover an ocean area of over 2 million square miles extending from California to Chile and over 1,000 miles seaward. The fee for a regional fishing license is $60 per net registered ton of the vessel to be licensed, and may be increased as more nations become party to the Agreement. License fees will pay for administration of the Agreement. Any excess revenues collected will be distributed among participating nations in proportion to the amount of tuna taken within 200 miles of their coasts.

The EPOTFA is an important step in achieving a comprehensive, workable international management regime for eastern Pacific tuna resources. The United States has a modern tuna purse seine fleet boasting 132 vessels valued in excess of $1.1 billion. U.S. tuna harvests exceed $200 million annually. The Agreement and the implementing legislation, H.R. 5147, are vital to achieve stability in the tuna fishery.

LEGISLATIVE HISTORY

H.R. 5147 was introduced on March 15, 1984 and referred to the House Committee on Merchant Marine and Fisheries. On March 22 the Subcommittee on Fisheries and Wildlife Conservation and the Environment approved H.R. 5147 without amendment by unanimous voice vote. The Merchant Marine and Fisheries Committee considered H.R. 5147 in a full committee markup on April 4, and ordered the bill reported to the House by unanimous voice vote without amendment.

The bill passed the House on May 1, and was received in the Senate and referred to the Committee on Commerce, Science, and Transportation the following day. On June 13, the Commerce Com-

mittee in executive session ordered the bill reported by unanimous voice vote without amendment.

SUMMARY OF MAJOR PROVISIONS

H.R. 5147, as reported, would:

1. Direct the Secretary of State to appoint the U.S. representative and alternates to an international authority, which will issue regional licenses for tuna fishing within a broad area of the eastern tropical Pacific Ocean;

2. Direct the Secretary of State to receive, on behalf of the U.S. Government, reports, requests, recommendations and other communications of the Council, and in consultation with the Secretary of Commerce, to act directly on such communications;

3. Provide that the U.S. Government agrees not to invoke the import prohibitions provisions of the Magnuson Fishery Conservation and Management Act against any party to the EPOTFA that seizes a U.S. tuna vessel pursuant to, and in a manner consistent with, the terms and provisions of the EPOTFA:

4. Specify that a U.S. vessel seized pursuant to the EPOTFA or its accompanying regulation would be ineligible for compensation under provisions of the Fishermen's Protective Act of 1967, unless the Secretary of State determines that the violation committed by the vessel is not so serious as to diminish the effectiveness of the Agreement;

5. Specify that all licensing fees which accrue to the United States shall be deposited into the U.S. Treasury;

6. Authorize the Secretary of Commerce, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, to issue regulations necessary to implement the terms of the EPOTFA and this legislation. Regulations may be applicable to all persons and vessels subject to the jurisdiction of the United States, wherever located;

7. Prohibit certain acts by persons subject to the jurisdiction of the United States that affect the EPOTFA;

8. Specify the authority, process, venue, and agents to enforce the provisions of the EPOTFA, its Protocol, and U.S. law and regulations which implement such Agreement and Protocol; and

9. Authorize the appropriation of such sums as may be necessary to implement this legislation in fiscal year 1985 and thereafter.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5147, the Eastern Pacific Tuna Licensing Act of 1984, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 13, 1984. We expect that no significant net budget impact will result from enactment of this bill.

H.R. 5147 directs the Secretary of State to appoint a representative of the United States to serve on the council created under the terms of the Eastern Pacific Ocean Tuna Fishing Agreement and to pay travel expenses resulting from participation on the council. The bill also stipulates that fees accruing to the United States under the agreement will be deposited directly into the Treasury, and directs the Secretary of Commerce in cooperation with other departments to issue regulations necessary to implement the agreement. Based on information from the Department of State, it is expected that fees collected from licensing will be approximately equal to the cost of developing regulations and participating on the council.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill authorizes the Secretary of Commerce to issue regulations to ensure compliance of commercial tuna fishermen with the provisions set out in the EPOTFA. The tuna industry provides employment to approximately 2,100 fishermen. The EPOTFA provides for an international authority to issue regional tuna fishing licenses. Although tuna fishermen will pay a fee for obtaining a license under terms of the EPOTFA, there is nothing in the implementing legislation that will place any regulatory burden on tuna fishermen. Moreover, the licenses will give the U.S. fishermen the ability to fish for tuna inside the 200-mile zones of Latin American nations without risk of seizure.

There is no impact on personal privacy of individuals affected by passage of this legislation. There will be no additional paperwork requirements resulting from passage of H.R. 5147.

SECTION-BY-SECTION ANALYSIS

This bill implements, for the United States, the EPOTFA and its Protocol.

Section 1

This section establishes the short title of this legislation to be the "Eastern Pacific Tuna Licensing Act of 1984".

Section 2

This section provides definitions for certain terms used in the bill and is generally self-explanatory. The terms include a geographic definition of the "Agreement Area" covered by the EPOTFA.

Section 3

This section directs the Secretary of State to appoint the U.S. representative, and not more than three alternates, to the Council established under the EPOTFA. The Council is the governing body that administers the licensing of tuna vessels of countries party to the EPOTFA.

Section 4

Section 4 provides that the Secretary of State shall receive the communications of the Council and is authorized to act on those communications, in consultation with the Secretary of Commerce. The Committee expects that the Secretary of State will rely upon other Federal agencies on such matters when appropriate.

Section 5

Section 5(a) of the bill provides that any U.S. vessel that is lawfully seized by a Contracting Party to the EPOTFA is ineligible for compensation under provisions of the Fishermen's Protective Act of 1967. If the Secretary of State, however, determines that the actions of the U.S. vessel were not so serious as to diminish the effectiveness of the Agreement, then the vessel owner could qualify for reimbursement under the Fishermen's Protective Act of 1967.

Section 5(b) states that any lawful seizure under the EPOTFA of a U.S. vessel will not result in U.S. retaliation against the seizing nation by imposition of import prohibitions through the Magnuson Fishery Conservation and Management Act. This provision of the bill applies only with respect to the tuna fishery; existing U.S. authority to invoke import restrictions on parties to the Agreement for seizures of U.S. vessels in fisheries not covered under the EPOTFA would continue.

Section 6

Section 6 stipulates that all fees accruing to the United States from participation in the Agreement shall be deposited in the U.S. Treasury.

Section 7

This section authorizes the Secretary of Commerce, in cooperation with other Federal agencies, to promulgate regulations to implement the purposes and objectives of the Agreement and the provisions of this legislation. The regulations are intended to apply to all persons and vessels subject to the U.S. jurisdiciton even though the affected individuals and vessels operate outside the U.S. fishery conservation zone. Section 7 further states that the Department of

Commerce regulations pertaining to conservation of species of tuna may be issued only to implement conservation recommendations made by the Council.

Section 8

Section 8(a) lists six actions prohibited under this legislation, including:

1. Fishing for designated species of tuna within the Agreement Area without a license issued by the Council, or in contravention of Department of Commerce regulations issued under the act;
2. Knowingly shipping, transporting, purchasing, selling, exporting, or possessing any tuna taken in violation of established regulations; and
3. Importing from any country, in violation of any regulation issued under section 7, any designated species of tuna.

Section 8(b) sets out the monetary civil and criminal penalties for any person convicted of engaging in the acts prohibited by subsection (a).

All tuna taken in violation of the Agreement and related regulations, or the monetary value of that tuna, are subject to forfeiture under section 8(c).

Section 9

Section 9 of the bill specifies the authority, process, venue, and agents to enforce the provisions of the EPOTFA, its Protocol, and U.S. law and regulations which implement such Agreement and Protocol.

Section 10

Section 10 of the bill authorizes the appropriation of such funds as may be necessary to implement this legislation without limitation to fiscal year.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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Calendar No. 1063

98TH CONGRESS
2d Session
SENATE
REPORT
98–563

INSURANCE FOR CERTAIN VESSELS

JULY 24 (legislative day, JULY 23), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 5505]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 5505) to amend title XII of the Merchant Marine Act, 1936, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

As reported, H.R. 5505 would extend for a 5-year period the authority of the Secretary of Transportation to issue war risk insurance under title XII of the Merchant Marine Act, 1936. This authority expires on September 30, 1984.

Title XII was enacted at the outbreak of the Korean war in 1950. It was temporary legislation that expired 5 years later. Since then, it has been extended several times, normally for 5-year periods.

BACKGROUND AND NEEDS

Title XII authorizes the Secretary of Transportation, with the approval of the President, to provide war risk insurance covering ships, cargoes, the lives and personal effects of the crew and other liabilities resulting from ownership and operation of the vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

Such a situation may be triggered when commercial underwriters drastically increase war risk hull insurance rates because they consider conditions existing at certain ports unreasonably hazardous to vessel safety. This, in turn, could persuade vessel owners to avoid trading in these areas to the detriment of U.S. ocean commerce.

Commercial insurance companies, both in the United States and abroad, are simply unable to underwrite the potential massive risk to

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which merchant shipping may be exposed in the event of a major armed conflict. Therefore, all commercial war risk insurance policies presently contain a termination clause, which automatically becomes effective upon hostile detonation of a nuclear device of war or upon the outbreak of war (whether there is a declaration of war or not) between any of the following countries: United States of America, United Kingdom (or any other member of the British Commonwealth), France, the Union of Soviet Socialist Republics, and the People's Republic of China.

The purpose of title XII, therefore, is to maintain the flow of U.S. waterborne commerce, including the maintenance of essential transportation services. Unless insurance is available against all risks, including war risks, commercial operators are not likely to send their ships into situations where a risk of war damage exists.

The war risk insurance program in effect creates a mutual pool to spread this risk among a large number of vessel operators trading worldwide. Our Government operates as the administrator of this pool. For modest fees it issues war risk insurance binders to U.S. and selected foreign-flag operators which becomes effective immediately upon the termination of commercial insurance. During the first 30 days binders are in effect, losses are paid by the Government. However at the end of 30 days, premiums are fixed retroactively on the basis of losses actually incurred and those anticipated. During the entire period title XII war risk insurance is effective, the Government, as the program's administrator, is charged with regularly adjusting the premiums so as to repay all losses. Thus, the program should cost the Government nothing. In fact, during World War II, when a similar program was in effect, the Government collected an excess of insurance premiums and other credits over amounts expended in settlement of losses of $127,285,014.

Section 1203(a) of the 1936 act authorizes the Secretary to provide insurance not only to American vessels, but also to foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States when so engaged.

Public Law 94–523, enacted in 1975, added the requirement that "the characteristics, the employment and the general management of the vessel by the owner or charterer" of foreign-flag tonnage would have to be evaluated before war risk insurance could be extended to those ships. This provision was part of a proposal which had been recommended by the Maritime Administration (MarAd) in order not only to check closely those qualifying requirements, but also to withdraw the blanket finding that all effective U.S. controlled vessels of Panamanian, Honduran, and Liberian registry were automatically eligible for war risk insurance. Thus, only those foreign-flag vessels deemed most suitable to augment the U.S.-flag merchant fleet in event of a national emergency are selected by MarAd on a case-by-case basis for inclusion in the program.

Legislative History

The House Subcommittee on Merchant Marine held a hearing on H.R. 5505 on April 3, 1984 and reported the bill to the full committee on May 2, 1984. The House Merchant Marine and Fisheries Committee reported the bill to the House of Representatives on May 10, 1984 where it passed that body on a vote of 413–0 on May 15, 1984.

The Senate received the bill on May 17, 1984 and referred it to the Committee on Commerce, Science, and Transportation on the same day. The Commerce Committee ordered the bill reported without a hearing on June 13, 1984.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 26, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 5505, ~~an~~ act to amend title XII of the Merchant Marine Act of 1936, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 13, 1984. We expect that enactment of this bill would result in net receipts to the federal government of approximately $1 million per year from 1985 through 1989. This bill would not affect the budgets of state and local governments.

H.R. 5505 extends through 1989 the authority of the Secretary of Transportation to insure American vessels and cargos shipped on such vessels against loss or damage from marine war risks. The current authorization expires September 30, 1984. Commercial insurance policies stipulate that coverage expires immediately if an outbreak of war occurs, or a nuclear weapon is detonated. Federal insurance would take over when the commercial coverage is terminated, and would continue until commercial insurance could be obtained on reasonable terms and conditions. Such coverage was provided in both World Wars I and II.

This program operates as a revolving fund, with income provided from binder fees, insurance premiums, interest from investments and claim reimbursements from other federal agencies. Fees and expenses of underwriting agents and appraisal contractors, as well as insurance claims are then paid from the fund. This program requires no appropriations. In fiscal year 1984 net receipts are expected to be approximately $1 million. The program is projected to continue operating at this level through 1989, assuming no major outbreaks that would trigger substantial claims.

This version of the bill is identical to the bill as ordered reported by the House Committee on Merchant Marine and Fisheries, for which CBO prepared a cost estimate on May 11, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill, as reported, will extend for 5 years the authority of the Secretary of Transportation to insure or reinsure merchant vessels against loss or damage from war if the Secretary determines that such insurance cannot be obtained on reasonable terms or conditions from private insurance companies. It would neither increase nor decrease the amount of Federal regulation. It would have no impact on personal privacy nor change the amount of paperwork now required.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936

SECTION 1214 OF THAT ACT

SEC. 1214. The authority of the Secretary to provide insurance and reinsurance under this title shall expire September 30, [1984] *1989.*

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